
STATUTORY INSTRUMENTS

1989 No. 677

**The Matrimonial and Family Proceedings
(Northern Ireland) Order 1989**

PART IV

**FINANCIAL RELIEF IN NORTHERN
IRELAND AFTER OVERSEAS DIVORCE ETC.**

Applications for financial relief

Applications for financial relief after overseas divorce etc.

16.—(1) Where—

- (a) a marriage has been dissolved or annulled, or the parties to a marriage have been legally separated, by means of judicial or other proceedings in an overseas country, and
- (b) the divorce, annulment or legal separation is entitled to be recognised as valid in Northern Ireland,

either party to the marriage may apply to the court in the manner prescribed by rules of court for an order for financial relief under this Part.

(2) If after a marriage has been dissolved or annulled in an overseas country one of the parties to the marriage remarries that party shall not be entitled to make an application in relation to that marriage.

(3) For the avoidance of doubt it is hereby declared that the reference in paragraph (2) to remarriage includes a reference to a marriage which is by law void or voidable.

(4) In this Part, except Articles 23, 27 and 28, “order for financial relief” means an order under Article 21 or 26 of a description referred to in that Article.

Leave of the court required for applications for financial relief

17.—(1) No application for an order for financial relief shall be made under this Part unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order.

(2) The court may grant leave under this Article notwithstanding that an order has been made by a court in a country outside Northern Ireland requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family.

(3) Leave under this Article may be granted subject to such conditions as the court thinks fit.

Interim orders for maintenance

18.—(1) Where leave is granted under Article 17 for the making of an application for an order for financial relief and it appears to the court that the applicant or any child of the family is in immediate need of financial assistance, the court may make an interim order for maintenance, that is to say, an order requiring the other party to the marriage to make to the applicant or to the child such periodical payments, and for such term, being a term beginning not earlier than the date of the grant of leave and ending with the date of the determination of the application for an order for financial relief, as the court thinks reasonable.

(2) If it appears to the court that the court has jurisdiction to entertain the application for an order for financial relief by reason only of sub-paragraph (c) of Article 19(1) the court shall not make an interim order under this Article.

(3) An interim order under paragraph (1) may be made subject to such conditions as the court thinks fit.

Jurisdiction of the court

19.—(1) Subject to paragraph (2), the court shall have jurisdiction to entertain an application for an order for financial relief if any of the following jurisdictional requirements are satisfied, that is to say—

- (a) either of the parties to the marriage was domiciled in Northern Ireland on the date of the application for leave under Article 17 or was so domiciled on the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (b) either of the parties to the marriage was habitually resident in Northern Ireland throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country; or
- (c) either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in Northern Ireland which was at some time during the marriage a matrimonial home of the parties to the marriage.

(2) Where the jurisdiction of the court to entertain proceedings under this Part would fall to be determined by reference to the jurisdictional requirements imposed by virtue of Part I of the Civil Jurisdiction and Judgments Act 1982(1) (implementation of certain European conventions) then—

- (a) satisfaction of the requirements of paragraph (1) shall not obviate the need to satisfy the requirements imposed by virtue of Part I of that Act; and
- (b) satisfaction of the requirements imposed by virtue of Part I of that Act shall obviate the need to satisfy the requirements of paragraph (1);

and the court shall entertain or not entertain the proceedings accordingly.

Duty of the court to consider whether Northern Ireland is appropriate venue for application

20.—(1) Before making an order for financial relief the court shall consider whether in all the circumstances of the case it would be appropriate for such an order to be made by a court in Northern Ireland, and if the court is not satisfied that it would be appropriate, the court shall dismiss the application.

(2) The court shall in particular have regard to the following matters—

- (a) the connection which the parties to the marriage have with Northern Ireland;

(1) 1982 c. 27

- (b) the connection which those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated;
- (c) the connection which those parties have with any other country outside Northern Ireland;
- (d) any financial benefit which the applicant or a child of the family has received, or is likely to receive, in consequence of the divorce, annulment or legal separation, by virtue of any agreement or the operation of the law of a country outside Northern Ireland;
- (e) in a case where an order has been made by a court in a country outside Northern Ireland requiring the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
- (f) any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside Northern Ireland and if the applicant has omitted to exercise that right the reason for that omission;
- (g) the availability in Northern Ireland of any property in respect of which an order under this Part in favour of the applicant could be made;
- (h) the extent to which any order made under this Part is likely to be enforceable;
- (i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

Orders for financial provision and property adjustment

Orders for financial provision and property adjustment

21. Subject to Article 24, the court on an application by a party to a marriage for an order for financial relief under this Article, may make any one or more of the orders which it could make under Part III of the principal Order if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in Northern Ireland, that is to say—

- (a) any order mentioned in Article 25(1) of the principal Order (financial provision orders);
- (b) any order mentioned in Article 26(1) of that Order (property adjustment orders).

Matters to which the court is to have regard in exercising its powers under Article 21

22.—(1) In deciding whether to exercise its powers under Article 21 and, if so, in what manner the court shall act in accordance with this Article.

(2) The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(3) As regards the exercise of those powers in relation to a party to the marriage, the court shall in particular have regard to the matters mentioned in Article 27(2)(a) to (h) of the principal Order and shall be under duties corresponding with those imposed by Article 27A(1) and (2) of the principal Order where it decides to exercise under Article 21 powers corresponding with the powers referred to in those paragraphs.

(4) As regards the exercise of those powers in relation to a child of the family, the court shall in particular have regard to the matters mentioned in Article 27(3)(a) to (e) of the principal Order.

(5) As regards the exercise of those powers against a party to the marriage in favour of a child of the family who is not the child of that party, the court shall also have regard to the matters mentioned in Article 27(4)(a) to (c) of the principal Order.

(6) Where an order has been made by a court outside Northern Ireland for the making of payments or the transfer of property by a party to the marriage, the court in considering in accordance with this

Article the financial resources of the other party to the marriage or a child of the family shall have regard to the extent to which that order has been complied with or is likely to be complied with.

Consent orders for financial provision or property adjustment

23.—(1) Notwithstanding anything in Article 22, on an application for a consent order for financial relief the court may, unless it has reason to think that there are other circumstances into which it ought to inquire, make an order in the terms agreed on the basis only of the prescribed information furnished with the application.

(2) Paragraph (1) applies to an application for a consent order varying or discharging an order for financial relief as it applies to an application for an order for financial relief.

(3) In this Article—

“consent order”, in relation to an application for an order, means an order in the terms applied for to which the respondent agrees;

“order for financial relief” means an order under Article 21; and

“prescribed” means prescribed by rules of court.

Restriction of powers of court where jurisdiction depends on matrimonial home in Northern Ireland

24.—(1) Where the court has jurisdiction to entertain an application for an order for financial relief by reason only of the situation in Northern Ireland of a dwelling-house which was a matrimonial home of the parties, the court may make under Article 21 any one or more of the following orders (but no other)—

- (a) an order that either party to the marriage shall pay to the other such lump sum as may be specified in the order;
- (b) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of a child of the family, or to such a child, such lump sum as may be so specified;
- (c) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be so specified for the benefit of such a child, the interest of the first-mentioned party in the dwelling-house, or such part of that interest as may be so specified;
- (d) an order that a settlement of the interest of a party to the marriage in the dwelling-house, or such part of that interest as may be so specified, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (e) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post-nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage so far as that settlement relates to an interest in the dwelling-house;
- (f) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement so far as that interest is an interest in the dwelling-house;
- (g) an order for the sale of the interest of a party to the marriage in the dwelling-house.

(2) Where, in the circumstances mentioned in paragraph (1) the court makes an order for the payment of a lump sum by a party to the marriage, the amount of the lump sum shall not exceed, or where more than one such order is made the total amount of the lump sums shall not exceed in aggregate, the following amount, that is to say—

- (a) if the interest of that party in the dwelling-house is sold in pursuance of an order made under paragraph (1)(g), the amount of the proceeds of the sale of that interest after deducting therefrom any costs incurred in the sale thereof;
 - (b) if the interest of that party is not so sold, the amount which in the opinion of the court represents the value of that interest.
- (3) Where the interest of a party to the marriage in the dwelling-house is held jointly or in common with any other person or persons—
- (a) the reference in paragraph (1)(g) to the interest of a party to the marriage shall be construed as including a reference to the interest of that other person, or the interest of those other persons, in the dwelling-house, and
 - (b) the reference in paragraph (2)(a) to the amount of the proceeds of a sale ordered under paragraph (1)(g) shall be construed as a reference to that part of those proceeds which is attributable to the interest of that party to the marriage in the dwelling-house.

Application to orders under Articles 18 and 21 of certain provisions of Part III of the principal Order

25. The following provisions of Part III of the principal Order (financial relief for parties to marriage and children of family) shall apply in relation to an order made under Article 18 or 21 as they apply in relation to a like order made under that Part of that Order, that is to say—

- (a) Article 25(3) (provisions as to lump sums);
- (b) Article 25(6) (consequential directions by court);
- (c) Article 30(1) and (2) (duration of continuing financial provision orders in favour of party to marriage);
- (d) Article 31 (duration of continuing financial provision orders in favour of children, and age limit on making certain orders in their favour);
- (e) Article 32 (direction for settlement of instrument for securing payments or effecting property adjustment), except paragraph (b);
- (f) Article 33 (variation, discharge etc. of certain orders for financial relief), except paragraph (2)(e) and paragraph (4);
- (g) Article 34 (payment of certain arrears unenforceable without the leave of the court);
- (h) Article 35 (orders for repayment of sums paid under certain orders);
- (i) Article 40 (orders for repayment of sums paid after cessation of order by reason of remarriage);
- (j) Article 41 (settlements etc. made in compliance with a property adjustment order may be avoided on bankruptcy of settlor); and
- (k) Article 42 (payments etc. under order made in favour of person suffering from mental disorder).

Orders for transfer of tenancies

Powers of the court in relation to certain tenancies of dwelling-houses

26. Where an application is made by a party to a marriage for an order for financial relief then, if—

- (a) one of the parties to the marriage is entitled, either in his or her own right or jointly with the other party, to occupy a dwelling-house situated in Northern Ireland by virtue of such a tenancy as is mentioned in paragraph 1 of Schedule 1, and
- (b) the dwelling-house has at some time during the marriage been a matrimonial home of the parties to the marriage, the court may make in relation to that dwelling-house any order which it could make under Part II of that Schedule if a decree of divorce, a decree of nullity of marriage or a decree of judicial separation in respect of the marriage had been granted in Northern Ireland; and the provisions of paragraphs 5 and 8(1) of that Schedule shall apply in relation to any order made under this Article as they apply in relation to an order made under Part II of that Schedule.

Avoidance of transactions intended to prevent or reduce financial relief

Avoidance of transactions intended to defeat applications for financial relief

27.—(1) For the purposes of this Article “financial relief” means relief under Article 18 or 21 and any reference to defeating a claim by a party to a marriage for financial relief is a reference to preventing financial relief from being granted or reducing the amount of relief which might be granted, or frustrating or impeding the enforcement of any order which might or has been made under either of those provisions at the instance of that party.

(2) Where leave is granted under Article 17 for the making by a party to a marriage of an application for an order for financial relief under Article 21, the court may, on an application by that party—

- (a) if it is satisfied that the other party to the marriage is, with the intention of defeating the claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
- (b) if it is satisfied that the other party has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition.

(3) Where an order for financial relief under Article 18 or 21 has been made by the court at the instance of a party to a marriage, then, on an application made by that party, the court may, if it is satisfied that the other party to the marriage has, with the intention of defeating the claim for financial relief, made a reviewable disposition, make an order setting aside the disposition.

(4) Where the court has jurisdiction to entertain the application for an order for financial relief by reason only of sub-paragraph (c) of Article 19(1), it shall not make any order under paragraph (2) or (3) in respect of any property other than the dwelling-house concerned.

(5) Where the court makes an order under paragraph (2)(b) or (3) setting aside a disposition it shall give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(6) Any disposition made by the other party to the marriage (whether before or after the commencement of the application) is a reviewable disposition for the purposes of paragraphs (2)(b) and (3) unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of the other party to defeat the applicant’s claim for financial relief.

(7) Where an application is made under paragraph (2) or (3) with respect to a disposition which took place less than three years before the date of the application or with respect to a disposition or other dealing with property which is about to take place and the court is satisfied—

(a) in a case falling within paragraph (2)(a) or (b), that the disposition or other dealing would (apart from this Article) have the consequence, or

(b) in a case falling within paragraph (3), that the disposition has had the consequence,

of defeating a claim by the applicant for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating the applicant's claim for financial relief.

(8) In this Article “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(9) The preceding provisions of this Article are without prejudice to any power of the court to grant injunctions under section 91 of the Judicature (Northern Ireland) Act 1978(2).

Prevention of transactions intended to defeat prospective applications for financial relief

28.—(1) Where, on an application by a party to a marriage, it appears to the court—

- (a) that the marriage has been dissolved or annulled, or that the parties to the marriage have been legally separated, by means of judicial or other proceedings in an overseas country; and
- (b) that the applicant intends to apply for leave to make an application for an order for financial relief under Article 21 as soon as he or she has been habitually resident in Northern Ireland for a period of one year; and
- (c) that the other party to the marriage is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction or otherwise deal with any property,

the court may make such order as it thinks fit for restraining the other party from taking such action as is mentioned in sub-paragraph (c).

(2) For the purposes of an application under paragraph (1)—

- (a) the reference to defeating a claim for financial relief shall be construed in accordance with paragraph (1) of Article 27 (omitting the reference to any order which has been made); and
- (b) paragraphs (7) and (8) of Article 27 shall apply as they apply for the purposes of an application under that Article.

(3) The preceding provisions of this Article are without prejudice to any power of the court to grant injunctions under section 91 of the Judicature (Northern Ireland) Act 1978(3).

Financial provision out of estate of deceased party to marriage

Extension of powers under Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979 in respect of former spouses

29.—(1) The Inheritance (Provision for Family and Dependents) (Northern Ireland) Order 1979(4) shall have effect with the following amendments, being amendments designed to give to persons whose marriages are dissolved or annulled overseas the same rights to apply for provision under that Order as persons whose marriages are dissolved or annulled under the principal Order.

(2) 1978 c. 23
(3) 1978 c. 23
(4) 1979 NI 8

(2) In Article 2(2) for the definition of “former wife” and “former husband” there shall be substituted the following definition—

““former wife” or “former husband” means a person whose marriage with the deceased was during the lifetime of the deceased either—

- (a) dissolved or annulled by a decree of divorce or a decree of nullity of marriage granted under the law of any part of the United Kingdom or the Channel Islands or under the law of the Isle of Man, or
- (b) dissolved or annulled in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man by a divorce or annulment which is entitled to be recognised as valid by the law of Northern Ireland;”.

(3) After Article 17 (restriction in divorce proceedings etc. of applications under the Order) there shall be inserted the following Article—

“Restriction imposed in proceedings under Matrimonial and Family Proceedings (Northern Ireland) Order 1989 on applications under this Order

17A.—(1) On making an order under Article 21 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (orders for financial provision and property adjustment following overseas divorces, etc.) the High Court, if it considers it just to do so, may, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under Article 4.

(2) Where an order under paragraph (1) has been made with respect to a party to a marriage which has been dissolved or annulled, then, on the death of the other party to that marriage, the court shall not entertain an application under Article 4 made by the first-mentioned party.

(3) Where an order under paragraph (1) has been made with respect to a party to a marriage the parties to which have been legally separated, then, if the other party to the marriage dies while the legal separation is in force, the court shall not entertain an application under Article 4 made by the first-mentioned party.”.

Interpretation

Interpretation of Part IV

30. In this Part—

“child of the family” and “rules of court” have the same meanings as in the principal Order;

“the court” means the High Court;

“dwelling-house” includes any building or part thereof which is occupied as a dwelling, and any yard, garden, garage or outhouse belonging to the dwelling-house and occupied therewith;

“order for financial relief” has the meaning given by Article 16(4);

“overseas country” means a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man;

“possession” includes receipt of, or the right to receive, rents and profits;

“rent” does not include mortgage interest.